

AMENDED IN ASSEMBLY JUNE 16, 2004

AMENDED IN ASSEMBLY JULY 2, 2003

AMENDED IN SENATE APRIL 7, 2003

SENATE BILL

No. 679

Introduced by Senator Ortiz

February 21, 2003

~~An act to add Article 21 (commencing with Section 114500) to Chapter 4 of Part 7 of Division 104 of the Health and Safety Code, relating to restaurants. An act to amend Section 103885 of the Health and Safety Code, relating to cancer.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 679, as amended, Ortiz. ~~Food establishments: nutritional information~~ *Statewide cancer reporting system.*

Existing law requires the Director of Health Services to establish a statewide system for the collection of information determining the incidence of cancer.

This bill would instead require the State Department of Health Services to establish and operate that system and to use the information to determine the sources of cancer and evaluate the measures designed to eliminate, alleviate, or ameliorate their effect. The bill would authorize the department to enter into contracts for the operation of the system and to designate a contractor as an authorized representative of the department for purposes of collecting cancer information reported by hospitals and other facilities.

Existing law requires all physicians and surgeons, hospitals, outpatient clinics, nursing homes, and all other facilities, individuals or agencies providing diagnostic or treatment services to patients with

cancer to grant to the department or its authorized representative access to all records that would identify cases of cancer, treatment of the cancer, or medical status of any identified cancer patient.

This bill would instead require the department and its authorized representatives to have access to all cancer and noncancer patient records, including all pathology reports, patient billing, and insurance payment records.

~~The California Uniform Retail Food Facilities Law (CURFFL), provides for the regulation of health and sanitation standards for retail food facilities by the State Department of Health Services. Under existing law, local health agencies are primarily responsible for enforcing CURFFL. A violation of any of these provisions is punishable as a misdemeanor.~~

~~This bill would require each food establishment, as defined, in this state that is part of a large chain, as defined, to either post complete nutritional information on all standard menu items on a wall in a public area, and in a conspicuous manner, or by providing it to customers with complete nutritional information, upon request, on all standard menu items sold at the food establishment, in which case the food establishment would be required to post a sign on the premises that nutritional information concerning food items is available upon request. This bill would provide that any food establishment will be in violation of the bill only if, it either knowingly or negligently fails to comply with these requirements and is guilty of an infraction, punishable by a fine of not less than \$25 or more than \$250, which may be assessed by an enforcement officer, except as specified, and that violation of the provisions of the bill is not a misdemeanor. This bill would provide that violations of its provisions shall not be enforced until January 1, 2005.~~

~~By creating an infraction, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~



~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: *yes no*.

The people of the State of California do enact as follows:

1 ~~SECTION 1. The Legislature finds and declares all of the~~
2 ~~SECTION 1. Section 103885 of the Health and Safety Code is~~
3 ~~amended to read:~~
4 103885. (a) The ~~director~~ *department* shall establish and
5 operate a statewide system for the collection of information
6 determining the incidence of cancer, ~~using population-based~~
7 ~~cancer registries modeled after the Cancer Surveillance Program~~
8 ~~of Orange County. As of the effective date of this section the~~
9 ~~director shall begin phasing in the statewide cancer reporting~~
10 ~~system. By July 1, 1988, all county or regional registries shall be~~
11 ~~implemented or initiated. By July 1, 1990, the statewide cancer~~
12 ~~reporting system shall be fully operational. Within 60 days of the~~
13 ~~effective date of this section, the director shall submit an~~
14 ~~implementation and funding schedule to the Legislature and shall~~
15 ~~use the information to determine the sources of cancer and~~
16 ~~evaluate measures designed to eliminate, alleviate, or ameliorate~~
17 ~~their effect. The department may enter into contracts for the~~
18 ~~operation of the statewide system. The department may designate~~
19 ~~a contractor as an authorized representative of the department.~~
20 (b) The department may designate any demographic parts of
21 the state as regional cancer incidence reporting areas and may
22 ~~establish~~ *designate* regional cancer registries; with the
23 responsibility and authority to carry out the intent of this section
24 in designated areas *as the authorized representatives of the*
25 ~~department.~~ Designated regional registries shall provide, on a
26 timely basis, cancer incidence data as designated by the state
27 department to the department. ~~The department may contract with~~
28 ~~an agency, including, but not limited to, a health systems agency,~~
29 ~~single county health department, multicounty health department~~
30 ~~grouping, or nonprofit professional association, representing a~~

~~designated cancer reporting region for the purposes of collecting and collating cancer incidence data.~~

(c) The director shall designate cancer as a disease required to be reported in the state or any demographic parts of the state in which cancer information is collected under this section. All cancers diagnosed or treated in the reporting area shall thereafter be reported to the representative of the department authorized to compile the cancer data, or any individual, agency, or organization designated to cooperate with that representative.

(d) (1) Any hospital or other facility providing therapy to cancer patients within an area designated as a cancer reporting area shall report each case of cancer to the department or the authorized representative of the department in a format prescribed by the department. If the hospital or other facility fails to report in a format prescribed by the department, the department's authorized representative may access the information from the hospital or the facility and report it in the appropriate format. In these cases, the hospital or other health facility shall reimburse the state department or the authorized representative for its cost to access and report the information.

(2) Any physician and surgeon, dentist, podiatrist, or other health care practitioner diagnosing or providing treatment for cancer patients shall report each cancer case to the department or the authorized representative of the department except for those cases directly referred to a treatment facility or those previously admitted to a treatment facility for diagnosis or treatment of that instance of cancer.

(e) Any hospital or other facility that is required to reimburse the department or its authorized representative for the cost to access and report the information pursuant to subdivision (d) shall provide payment to the department or its authorized representative within 60 days of the date this payment is demanded. In the event any hospital or other facility fails to make the payment to the department or its authorized representative within 60 days of the date the payment is demanded, the department or its authorized representative may, at its discretion, assess a late fee not to exceed 1½ percent per month of the outstanding balance. Further, in the event that the department or its authorized representative takes a legal action to recover its costs and any associated fees, and the department or its authorized representative receives a judgment in

its favor, the hospital or other facility shall also reimburse the department or its authorized representative for any additional costs it incurred to pursue the legal action. Late fees and payments made to the department by hospitals or other facilities pursuant to this subdivision shall be considered as reimbursements of the additional costs incurred by the department.

(f) ~~All~~ *In addition to the reporting requirements and access authority provided in subdivision (d), all physicians and surgeons, hospitals, outpatient clinics, nursing homes, and all other facilities, individuals, or agencies providing diagnostic or treatment services to patients with cancer shall grant to the department or the and its authorized representative representatives access to all cancer and noncancer patient records that would identify cases of cancer or would establish, including, but not limited to, all pathology reports, patient billing, and insurance payment records. Access shall be granted upon request for rapid case ascertainment, for establishing characteristics of the cancer, treatment of the cancer, or medical status of any identified cancer patient who has been diagnosed with cancer, and for uses as otherwise determined to be necessary, in the judgment of the department, to achieve the purposes of this section. Willful failure to grant access to those records shall be punishable by a fine of up to five hundred dollars (\$500) each day access is refused. Any fines collected pursuant to this subdivision shall be deposited in the General Fund. Any regulations implementing, interpreting, or making specific the reporting requirements and access authority provided in subdivision (d) shall not be construed to limit the access authority granted by this subdivision.*

(g) (1) Except as otherwise provided in this section, all information collected pursuant to this section shall be confidential. For purposes of this section, this information shall be referred to as “confidential information.”

(2) The department and ~~any regional cancer registry designated by the department~~ *its authorized representatives* shall use the information to determine the sources of ~~malignant neoplasms~~ *cancer* and evaluate measures designed to eliminate, alleviate, or ameliorate their effect.

(3) Persons with a valid scientific interest who are engaged in demographic, epidemiological, or other similar studies related to health who meet qualifications as determined by the department,

1 and who agree, in writing, to maintain confidentiality, may be
2 authorized access to confidential information.

3 (4) The department and ~~any regional cancer registry designated~~
4 ~~by the department~~ *its authorized representatives* may enter into
5 agreements to furnish confidential information to other states'
6 cancer registries, federal cancer control agencies, local health
7 officers, or health researchers for the purposes of determining the
8 sources of cancer and evaluating measures designed to eliminate,
9 alleviate, or ameliorate their effect. Before confidential
10 information is disclosed to those agencies, officers, researchers, or
11 out-of-state registries, the requesting entity shall agree in writing
12 to maintain the confidentiality of the information, and in the case
13 of researchers, shall also do both of the following:

14 (A) Obtain approval of their committee for the protection of
15 human subjects established in accordance with Part 46
16 (commencing with Section 46.101) of Title 45 of the Code of
17 Federal Regulations.

18 (B) Provide documentation to the department that
19 demonstrates to the department's satisfaction that the entity has
20 established the procedures and ability to maintain the
21 confidentiality of the information.

22 (5) Notwithstanding any other provision of law, any disclosure
23 authorized by this section shall include only the information
24 necessary for the stated purpose of the requested disclosure, used
25 for the approved purpose, and not be further disclosed *without the*
26 *written authorization of the department*.

27 (6) The furnishing of confidential information to the
28 department or its authorized representative in accordance with this
29 section shall not expose any person, agency, or entity furnishing
30 information to liability, and shall not be considered a waiver of any
31 privilege or a violation of a confidential relationship.

32 (7) The department shall maintain an accurate record of all
33 persons who are given access to confidential information. The
34 record shall include: the name of the person authorizing access;
35 name, title, address, and organizational affiliation of persons given
36 access; dates of access; and the specific purpose for which
37 information is to be used. The record of access shall be open to
38 public inspection during normal operating hours of the
39 department.

(8) Notwithstanding any other provision of law, no part of the confidential information shall be available for subpoena, nor shall it be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding, nor shall this information be deemed admissible as evidence in any civil, criminal, administrative, or other tribunal or court for any reason.

(9) Nothing in this subdivision shall prohibit the publication by the department of reports and statistical compilations that do not in any way identify individual cases or individual sources of information.

(10) Notwithstanding the restrictions in this subdivision, the individual to whom the information pertains shall have access to his or her own information in accordance with Chapter 1 (commencing with Section 1798) of Title 1.8 of the Civil Code.

(h) For the purpose of this section, “cancer” means either of the following:

(1) All malignant neoplasms, regardless of the tissue of origin, including malignant lymphoma, ~~Hodgkins~~ *Hodgkin’s* disease, and leukemia, but excluding basal cell and squamous cell carcinoma of the skin.

(2) All primary intracranial and central nervous system (CNS) tumors occurring in the following sites, irrespective of histologic type: brain, meninges, spinal cord, caudae equina, cranial nerves and other parts of the CNS, pituitary gland, pineal gland, and craniopharyngeal duct.

(i) Nothing in this section shall preempt the authority of facilities or individuals providing diagnostic or treatment services to patients with cancer to maintain their own facility-based cancer registries.

(j) It is the intent of the Legislature that the department, in establishing a system pursuant to this section, maximize the use of available federal funds.

~~following:~~

~~(a) Research continues to reveal the strong link between diet and health, and that diet-related diseases start early in life.~~

~~(b) Increased caloric intake is a key factor contributing to the alarming increase in obesity in the United States. According to the federal Centers for Disease Control and Prevention, two-thirds of American adults are overweight or obese, and the rates of obesity in children and teens have tripled since 1980. Obesity increases the~~

1 risk of diabetes, heart disease, stroke, and other health problems.
2 Each year obesity costs families, businesses, and governments
3 \$117 billion.

4 (e) Excess saturated fat intake is a major risk factor for heart
5 disease, which is the leading cause of death in the United States.
6 While it is often thought to primarily affect men and older people,
7 cardiovascular disease is the leading killer of women and kills
8 61,000 people between the ages of 45 and 64 years each year. Heart
9 disease is also a leading cause of disability among working adults
10 and its impact on the national economy is significant, estimated in
11 2001 to total \$298 billion in health care expenditures and lost
12 productivity.

13 (d) Increased sodium intake is associated with increased risk of
14 high blood pressure, or hypertension, a condition that can lead to
15 cardiovascular disease, especially stroke. The proportion of
16 Americans with high blood pressure is 45 percent at age 50 years,
17 60 percent at age 60 years, and over 70 percent at age 70 years.

18 (e) While nutrition labeling is currently required on most
19 packaged foods, this information is required only for restaurant
20 foods for which nutrient content or health claims are made.

21 (f) Three quarters of American adults report using food labels
22 on packaged foods, which are required by the federal Nutrition
23 Labeling and Education Act of 1990. Using food labels is
24 associated with eating more healthful diets, and approximately
25 one-half (48 percent) of people report that the nutrition
26 information on food labels has caused them to change their minds
27 about buying a food product.

28 (g) Health experts generally agree that obesity prevention
29 requires both maintaining a healthy diet and regular physical
30 activity. Many children spend excessive amounts of time engaged
31 in sedentary activities, maintain unhealthy diets, and, at the same
32 time, lack sufficient amounts of regular physical activity, all of
33 which has a negative impact on their health and weight.

34 (h) According to the Youth Risk Behavior Survey (YRBS), the
35 majority of children of all ages in the United States do not get
36 enough physical activity, and one-third of these children are
37 considered physically inactive. The YRBS also found that only 52
38 percent of students in the United States were enrolled in a physical
39 education class, and only 32 percent attended a physical education
40 class daily. Research done by the California Center for Public

1 ~~Health Advocacy found that 39.6 percent of children in California~~
2 ~~are unfit.~~

3 ~~(i) It is the intent of the Legislature, in enacting this act, that~~
4 ~~more food establishments shall provide nutritional information on~~
5 ~~their prepared food items so that customers can more fully~~
6 ~~understand the nutritional value of the foods that they consume.~~
7 ~~However, the Legislature does not intend, in adopting this act, that~~
8 ~~food establishments be held liable for lawsuits concerning obesity~~
9 ~~claims that are based on a failure to comply with this act.~~

10 ~~SEC. 2. Article 21 (commencing with Section 114500) is~~
11 ~~added to Chapter 4 of Part 7 of Division 104 of the Health and~~
12 ~~Safety Code, to read:~~

13
14 ~~Article 21. Food Establishment Nutrition~~
15

16 ~~114500.—(a) Each food establishment in this state that is part~~
17 ~~of a large chain shall make nutritional information available to~~
18 ~~customers on all standard menu items sold at the food~~
19 ~~establishment. The food establishment shall comply with this~~
20 ~~requirement by either posting the nutritional information on a wall~~
21 ~~in a public area and in a conspicuous manner or by providing the~~
22 ~~nutritional information, upon request by a customer, in printed~~
23 ~~form, such as a flyer or pamphlet, that the customer may keep. If~~
24 ~~the food establishment chooses to provide the information in~~
25 ~~printed form, the food establishment shall also post a sign on the~~
26 ~~premises stating that nutritional information concerning food~~
27 ~~items served at the food establishment is available upon request.~~
28 ~~The sign shall be conspicuous and visible at the counter area in~~
29 ~~restaurants where customers order food at a counter, or visible near~~
30 ~~the front entrance in food establishments where customers order~~
31 ~~from tables and not at a counter. The sign may be incorporated into~~
32 ~~other signs as long as the sign meets the requirements of this~~
33 ~~section.~~

34 ~~(b) For the purposes of this section, nutritional information~~
35 ~~provided by a food establishment to a customer shall be similar to~~
36 ~~the information that is required by federal law to appear in~~
37 ~~nutrition labeling pursuant to subsection (q) of Section 343 of Title~~
38 ~~21 of the United States Code.~~

39 ~~(c) Subdivision (a) does not apply to items that are on the menu~~
40 ~~for less than six months.~~

~~(d) The nutritional information may include a disclaimer that acknowledges that there may be variations in nutritional content across servings, based on variations in overall size and quantities of ingredients, and based on special ordering.~~

~~(e) The duty of an enforcement officer to enforce this section shall be limited to conducting an inspection in the course of regular health inspections of food facilities, and verifying that the food establishment has made a good faith effort to comply with this article.~~

~~(f) A food establishment that violates this section is guilty of an infraction, punishable by a fine of not less than twenty-five dollars (\$25) or more than two hundred fifty dollars (\$250) for each violation, which may be assessed by an enforcement officer. Notwithstanding Section 113935, a violation of this section is not a misdemeanor.~~

~~(g) (1) A food establishment shall be in violation of this article only if it knowingly or negligently fails to comply with the requirements of this section.~~

~~(2) An individual franchisee is not in violation of this act if the franchisee's parent corporation has failed to provide the necessary materials required by this article.~~

~~(h) Violations of this article shall not be enforced until January 1, 2005.~~

~~(i) For the purposes of this section, the following definitions apply:~~

~~(1) "Food establishment" means any establishment used or operated for the purpose of preparing and serving food at the retail level, not including a mobile food facility, satellite food distribution facility, temporary food facility, open-air barbecue, certified farmers' market, stationary mobile food preparation unit, or mobile food preparation unit.~~

~~(2) "Large chain" means a chain of restaurants that includes 10 or more franchises or restaurants in this state.~~

~~SEC. 3.—No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within~~

1 ~~the meaning of Section 6 of Article XIII B of the California~~
2 ~~Constitution.~~

3 ~~However, notwithstanding Section 17610 of the Government~~
4 ~~Code, if the Commission on State Mandates determines that this~~
5 ~~act contains other costs mandated by the state, reimbursement to~~
6 ~~local agencies and school districts for those costs shall be made~~
7 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
8 ~~4 of Title 2 of the Government Code. If the statewide cost of the~~
9 ~~claim for reimbursement does not exceed one million dollars~~
10 ~~(\$1,000,000), reimbursement shall be made from the State~~
11 ~~Mandates Claims Fund.~~

